

which will benefit from the proposed collection of data. NOAA will confirm with the identified sponsor that these data are required by it and that the sponsor is willing to share with the user any frequency channel resource allocated to it.

(d) User agencies and organizations will be admitted to system use with priority status as follows:

(1) NOAA users or users whose data are required for implementation of NOAA programs.

(2) Users whose data are desired to support NOAA programs.

(3) Users whose data and/or use of the GOES DCS will further a program of an agency or department of the United States Government.

(4) Users whose data are required by a State or local government of the United States. No other users will be admitted to system use.

(e) All users of the GOES DCS must use a data collection platform radio set whose technical characteristics conform to specifications established by NOAA. The message format must be as specified by NOAA.

(f) All users are responsible for all costs associated with the procurement and operation of the platforms, any confidential treatment of data under § 911.3, and for the acquisition of the data from those platforms either directly from the satellite or from the NOAA GOES Data Collection Center at the World Weather Building in Suitland, Maryland.

(g) Design characteristics of the environmental data collection system on the spacecraft require that users conform to technical standards established by NOAA. See § 911.5 of this part.

(h) NOAA will make every effort to maintain the GOES DCS in full operation at all times subject to the availability of appropriations. NOAA will bear no responsibility for any losses as a result of the nonavailability of the DCS.

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§ 911.3 Treatment of data.

(a) All users of the GOES DCS must agree to permit NOAA and other agencies of the United States Government the free and open use of all data collected from their platforms, except as otherwise provided for in paragraphs (b) through (f) of this section, and to provide NOAA with the necessary information on data formats to facilitate such use.

(b) NOAA will consider a request from a user, who has otherwise met the criteria of § 911.2, for proprietary treatment by NOAA of all or a portion of the data collected from the platforms owned by the user. Each request for proprietary treatment must:

(1) Specifically identify the exact portion(s) of the data claimed to be confidential;

(2) State whether the data claimed to be confidential is commonly known within the user's industry or activity or is readily ascertainable by outside persons with a minimum of time and effort;

(3) State how release of the data would be likely to cause substantial harm to the user's competitive position;

(4) Identify the Federal agency or governmental program which would benefit by gaining access to the data to be collected;

(5) State whether the submitter is authorized to make claims of confidentiality on behalf of the person or organization concerned; and

(6) State when the confidential data may be made public.

(c)(1) NOAA may treat environmental data obtained by the GOES DCS as proprietary if the Assistant Administrator with the advice of the General Counsel and other interested Federal officers, finds that:

(i) The data are trade secrets or commercial information obtained from a user and privileged or confidential; and

(ii) Use of the GOES DCS for collection and proprietary treatment of such data is in the public interest. Proprietary treatment of data which are required to protect life or property will be deemed not to be in the public interest.

(2) All data for which the Assistant Administrator grants proprietary

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treatment shall not be publicly disclosed in individually identifiable form without the user's authorization, except in accordance with the procedures set forth in paragraph (f) of this section or pursuant to the order of a court of competent jurisdiction. Such data may be combined and publicly disclosed in such formats as general statistical studies, environmental warnings and forecasts, or aggregated reports or summaries in which the identity of the user(s) furnishing such information or the confidential portions of the data shall not be disclosed.

(d)(1) The Assistant Administrator shall notify the user in writing whether all or a portion of the data will be treated as proprietary and shall state the reasons for the decision. The user may appeal the initial decision of the Assistant Administrator by filing a notice of appeal, including supporting information, with the Administrator of NOAA, Department of Commerce, Washington, DC 20230, within 30 days (excluding Saturdays, Sundays and legal holidays) of receipt of notice.

(2) The Administrator may decide the appeal on the basis of the information already submitted or may request additional information from the user. The decision of the Administrator shall state the reasons for the decision, and shall become effective upon issuance.

(e) The Assistant Administrator after consultation with other interested NOAA officers, shall institute a control system to protect the confidentiality of data that have been granted proprietary treatment under this section and are in the possession of NOAA. The control system will provide for safeguarding the data and ensuring that only authorized officers and employees have access to the data for official purposes.

(f) Data that have been accorded proprietary treatment for which NOAA or another Federal agency has no present requirement may be returned to the possession of the user and kept by the user until such time as NOAA or another Federal agency has a present requirement for the data at which time the data shall be made available to NOAA or to another Federal agency in accordance with the terms of a mutually acceptable agreement.

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(g)(1) All requests from any person(s) for data granted proprietary treatment under this section shall be processed consistent with NOAA Freedom of Information Act (FOIA) Regulations (15 CFR part 903), NOAA Directives Manual 21–25, Department of Commerce Administrative Orders 205–12 and 205–14 and 15 CFR part 4.

(2) The user shall be notified within five days (excluding Saturdays, Sundays, and legal public holidays) of receipt by NOAA of an FOIA request for disclosure of data which otherwise have been granted proprietary treatment under this section. The user may submit written objections to release of the data, together with any supporting information, to the Assistant Administrator within five days (excluding Saturdays, Sundays and legal public holidays) of receipt of notice. The failure to object within the prescribed time limit will be considered an acknowledgment that the user does not wish to claim exempt status under the FOIA.

(3) If data which have been granted proprietary treatment under this section are found to be disclosable, in whole or in part, under the FOIA, the user submitting the data will be notified in writing and given five days (excluding Saturdays, Sundays, and legal holidays) from receipt of the notice to seek judicial relief.

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§ 911.4 Continuation of GOES-DCS.

(a) NOAA expects to continue to operate a geostationary satellite data collection system while it operates GOES satellites, subject to the availability of future appropriations.

(b) As use of the system in support of NOAA programs increases, it eventually may be necessary to restrict the use by other users. If a use restriction should become necessary, or in the event that NOAA discontinues operation of GOES, NOAA will provide, to the maximum extent possible, advance notice to the affected users.